Number 9 Original

JUN 25 1971

E. ROBERT SEAVER, CLE

In the Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.

Objection of the State of Louisiana to the Right of the United States at this time to file a Motion for Entry of Supplemental Decree as to the State of Louisiana (No. 3) and Memorandum in Support of Objection

JACK P. F. GREMILLION,
Attorney General.

JOHN L. MADDEN,
Assistant Attorney General.

PAUL M. HEBERT,
VICTOR A. SACHSE,
OLIVER P. STOCKWELL,
FREDERICK W. ELLIS,
WILLIAM E. SHADDOCK,
W. THOMAS TETE,
Special Assistant Attorneys General.

State of Louisiana,
State Capitol,
Baton Rouge, Louisiana 70804.

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OBJECTION

The State of Louisiana, by its Attorney General, moves the Court as follows:

I.

That the Court refuse the right of the United States at this time to file a motion for entry of supplemental decree as to the State of Louisiana (No. 3) and that the Court further refuse to enter any order requiring Louisiana to respond.

II.

This objection is made on the following grounds:

(1) That by order dated May 19, 1969, Walter P. Armstrong, Jr., Esq., of Memphis, Tennessee, was appointed as Special Master to make a preliminary determination consistent with the opinion of March 3, 1969, 393 U. S. 11.

(2) Extensive hearings have been held before Walter P. Armstrong, Jr., Esq., Special Master, and volumes of evidence have been introduced both by the United States and the State of Louisiana, and there are now pending before the Special Master certain motions which will have a material bearing on the issues in this case.

(3) The proposed motion of the United States was filed with this Court at the time an additional hearing was scheduled before Walter P. Armstrong, Jr., Esq., Special Master, in Baton Rouge, Louisiana, commencing on April 26, 1971.

(4) The opinions of this Court are not final since a decree has not been rendered fixing the outermost limits of the rights acquired by the State of Louisiana under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301-1315.

(5) That while the State of Louisiana has asserted its outermost seaward contentions on the issues referred to the Special Master, these assertions have been made on the ruling of the Special Master that he could consider only issues submitted to him by the Supreme Court and on the assurance that Louisiana's assertions before him would not prejudice the right of the State of Louisiana to urge before this Court claims further seaward.

(6) That the evidence introduced before the Special Master supports the State of Louisiana's claim under the Submerged Lands Act further seaward than the issues that were referred to the Special Master by

the Supreme Court before all of the evidence had been developed in this case.

(7) That there is now pending before a Special Master appointed by this Court in the suit entitled "*The State of Texas, Plaintiff v. The State of Louisiana, Defendant*, No. 36 Original in the Supreme Court of the United States, October Term, 1970", to determine the boundary between the State of Louisiana and the State of Texas, which will have a material bearing on Louisiana's seaward claim before the Court under the Submerged Lands Act.

(8) That there is now pending before the Supreme Court the case of *United States v. Maine*, et al, No. 35 Original (398 U. S. 947), which has been referred to a Special Master, involving the rights of the Atlantic States under the Submerged Lands Act, which could have a material bearing on Louisiana's seaward claim before this Court under the Submerged Lands Act.

(9) That there can be no practical prejudice to the United States from this Court's denial of the right of the United States to file its proposed motion at this time, prior to the Special Master's finding and report because the funds which are the subject of such motion, under the terms of the Interim Agreement approved by this Court, are already on deposit with the Federal Government and are not subject to the custody or control of the State of Louisiana.

III.

For these reasons the right of the United States

to file a motion for entry of supplemental decree as to the State of Louisiana (No. 3) should be denied and no order issued requiring Louisiana to respond.

IV.

In the alternative, if the Court permits the filing of the motion, the State of Louisiana's time to respond should be exended until the Special Master files his report with this Court and in no event less than one hundred and twenty (120) days from the date the Court permits the filing of the motion.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General.

JOHN L. MADDEN,
Assistant Attorney General.

PAUL M. HEBERT,
VICTOR A. SACHSE,
OLIVER P. STOCKWELL,
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WILLIAM E. SHADDOCK,
W. THOMAS TETE,
Special Assistant Attorneys General.

By: /s/ Jack P. F. Gremillion

Number 9 Original

In the Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.

Memorandum in Support of Louisiana's Opposition to the Right of the United States to File a Motion for Entry of Supplemental Decree (No. 3)

ARGUMENT

The United States by seeking to file its Motion herein, necessarily recognizes that no final decree has been entered fixing the seaward boundary of Louisiana under the Submerged Lands Act. The proposed Motion of the United States seeks to force Louisiana in a concurrent proceeding before this Court to try on a piecemeal basis issues relevant to any final decree this Court might enter in the future. Orderly procedure requires that full information, including the Special Master's Report, be available to this Court before any final or further decrees can be appropriately entered.

It has become clear the United States has decided upon a course of action whereby it would litigate the rights of the various states under the Submerged Lands Act on a piecemeal basis, starting with the

State of California (381 U. S. 139) with one eye on the Gulf Coast States. After an opinion in that case the United States would litigate the rights of the Gulf Coast States (363 U. S. 1), with one eye on the Atlantic States. After the opinion in the Gulf Coast States case the United States is now litigating the rights of the Atlantic States (*U. S. v. Maine*, 398 U. S. 947). In this manner the United States would seek to establish precedents in one area to be used in litigation in another area, although the other area was not party to that suit, always feeling it had settled the boundary in one area even though this Court may take a different position in another area, when, as a matter of fact, the same legal principles should apply to all States under the Submerged Lands Act and should have all been considered at one time.

A large volume of evidence has already been presented to the Special Master by both sides, which brings clearly into focus the need for this Court to reconsider some of the pronouncements made in its former opinions. The opinions rendered to date by this Court are not, as both parties recognize, final judgments. The judgments only become final when the extent of Louisiana's rights under the Submerged Lands Act have been definitely established by this Court by coordinates and a decree rendered fixing that boundary, which has not been done to date and should not be done prior to the Master's Report.

The proceedings before the Special Master are nearing completion insofar as the taking of evidence is concerned, the last hearing in Baton Rouge having

consisted of Louisiana's rebuttal evidence as to which certain crucial matters subject to discovery are still to be presented and will have a bearing upon prior matters considered by this Court.

The Special Master ruled he could consider only the issues referred to him in the opinion of March 3, 1969, even though the evidence presented would show a seaward extension of Louisiana's claim under the Submerged Lands Act not covered by such issues. Over the strenuous objection of the State of Louisiana and at the insistence of the United States the Special Master ruled that the State of Louisiana had to define *its outermost claim under the issues referred to him.* Louisiana explicitly stated that these claims were not the outermost claims of the State of Louisiana *before the Court.* The Special Master ruled that the assertion of these claims before him would not prejudice in any way Louisiana's right to urge a more seaward claim before this Court.

Louisiana, in trial of this matter, has contemplated and so advised the Special Master and the United States, that when the Special Master files his Report, Louisiana will move the Court to exercise its reserved jurisdiction to reconsider important aspects of prior rulings in the light of strong evidence not previously before this Court and in the light of other pending litigation. In this Original Proceeding a Motion and request for further relief in the interest of justice is within the Court's province pursuant to Rule 60 of the Federal Rules of Civil Procedure.

The other proceedings before this Court which

could have a material bearing upon the ultimate extent of Louisiana's rights under the Submerged Lands Act are:

United States v. Maine et al, No. 35 Original, 398 U. S. 947. This case has been referred to a Special Master to hear evidence and for recommendations as to legal conclusions.

State of Texas v. State of Louisiana, No. 36, Original in the Supreme Court of the United States, October Term 1970, which is now before a Special Master appointed by the Court. One of the issues in that case is the common boundary between Louisiana and Texas as fixed in the sea by the Treaty of Amity of 1819.

This Court, in 1960, with two very strong dissents, limited Louisiana to a distance of three miles into the Gulf of Mexico (363 U. S. 1). This decision was predicated on at least the following:

A. (1) The Court in *United States v. California*, 381 U. S. 139 (1947), a divided decision, held that no State had any boundary into the sea. While none of the Atlantic Coast States were parties to that litigation, the rationale of the Court in reaching its decision was that none of the original thirteen states had a water boundary beyond their coastline after they came into the Union.

(2) This Court has now denied to the United States motions for summary judgment in *United States v. Maine*, 398 U. S. 947. If this Court holds that Maine and other Atlantic States did indeed have boundaries into the sea, the basis for the original California decision will be gone.

(3) If this Court now decides that States had boundaries into the sea as they came into the Union, the issue as to Louisiana, as well as with respect to the Atlantic States must be the extent of that water boundary which Louisiana contends is three leagues from the coast. Reconsideration is the only action in accord with the equitable principles incorporated into Rule 60 of the Federal Rules of Civil Procedure.

B. (1) In the 1959 hearing of an earlier stage of this case, it was recognized that Texas had a boundary of three leagues into the Gulf of Mexico because its Boundary Act of 1836 had declared: "Begin at the mouth of the Sabine River in the sea, thence at a distance of three leagues from shore. . . ." The Boundary Act concluded by following the line established by the United States and Spain in 1819 "TO THE POINT OF BEGINNING" which explicitly was placed three leagues into the Gulf of Mexico. As Louisiana was the extreme Southwest portion of the United States, it necessarily followed that the Eastern boundary of Texas was the western boundary of Louisiana and the Southeast corner of Texas is the Southwest corner of Louisiana. So the State of Texas argued, and so Justice Douglas of this Court said:

> If the southeast corner of Texas was three leagues offshore, it is difficult for me to see how the southwest corner of Louisiana was not at the same point. From the beginning the United States and Spain fixed their corner west of the Mississippi 'on the Gulph of Mexico, at the mouth of the river Sabine, in the sea.' 8 Stat. 254. If we move the Texas boundary out three leagues, it

> is hard to see why Louisiana's does not accompany it. It has long been recognized that a part of Louisiana's border is 'a water boundary' that extends 'to the open sea or Gulf of Mexico.' State of Louisiana v. State of Mississippi, 202 U.S. 1, 43, 26 S.Ct. 408, 419, 50 L.Ed. 913, and includes 'the deep-water sailing channel line as a boundary.' Id., 202 U.S. at page 44, 26 S.Ct. at page 419. (363 U.S. 1, 115).

(2) The majority of the Court closely questioned Solicitor General Lee Rankin on this, and his objection was that American officials had not related the boundary of Louisiana to the boundary of Texas.

(3) Diligent search by Louisiana did not reveal anything other than the Treaty of Amity of 1819 and the Texas Boundary Act of 1836 to relate the two, but Louisiana has since discovered communications from Secretary of State Henry Clay to President John Quincy Adams and from President Adams to the House of Representatives of the United States which makes it clear that there is one boundary for the two entities, Mexico then and Texas now and the State of Louisiana, then and now. (See Appendix "A" and "B").

(4) As this Court exists to do justice and as the State of Louisiana is entitled to like treatment as that accorded to other States, an opportunity should be given to the State of Louisiana to urge that its southwest boundary coincides with the southeast boundary of the State of Texas and that, therefore, it had a water boundary at the time it was admitted into the

Union. This matter should be reconsidered by the Court after this Court makes a determination as to whether or not the Atlantic States are entitled to a water boundary and after the opinion in the case of *Texas v. Louisiana*, No. 36 Original, which is now before Judge Van Pelt as Special Master, has been decided.

(5) This is one of the issues before the Special Master in the case of *The State of Texas v. The State of Louisiana*, No. 36 Original in the Supreme Court of the United States, October Term, 1970, which could have a material bearing on Louisiana's seaward claim under the Submerged Lands Act.

We stress again to the Court, that no final decree has been rendered in this case as is evidenced by the hearing now before the Special Master and by the motion the United States requests to file.

The resolution of questions of great constitutional significance because of the importance of States in our federal system, the newness of the litigation concerning Maine and the other original states, and the recent action of this Court in denying the motion of the United States for summary judgment in that case, the pendency of the Texas-Louisiana boundary case, and the uniqueness and lack of precedent in the application of Geneva Convention criteria, justify this Court in refusing to permit the United States to file its proposed motion at this time.

The proposed motion of the United States itself is predicated upon responses by Louisiana to interroga-

tories and requests for admissions filed by the United States before the Special Master. Louisiana's rights, as we have indicated, were explicitly reserved to seek additional relief before this Court.

In this litigation highly important to this various coastal States of the United States, the rights of the States should be thoroughly protected. Until the Special Master, in this case, makes his report, it would be premature to permit the United States to file the present motion since some of the issues to be raised by the State of Louisiana could best be considered by this Court only after the evidence presented before the Special Master has been analyzed by the Master and filed with this Court.

C. In the 1960 opinion the United States conceded that all areas landward of the islands were inland waters. In denying Louisiana's water boundary the Court used the assumption that there were no islands off the coast of Louisiana at a greater distance than three leagues. Evidence has now been developed that there are and were islands further than three leagues off the mainland shore, which the United States incorrectly urges to be the coast of Louisiana, the situation of which is another factor to be considered by the Court in determining whether Louisiana had a water boundary co-extensive with that of the State of Texas.

For fishing alone, the United States has thought it well to claim 12 miles instead of 3 but by the action of the United States in this case it would pull land-

ward the line from which the 12 miles would be measured.

All of this suggests a too hasty speed to give away finally American territory never to this day claimed or used by another nation.

If, to the misfortune of all of the people of the United States, such a curtailment of territory is to be accomplished, surely it should not be on the basis of an interim decree but only after full consideration of all the information forthcoming from proceedings now pending before the Special Master.

The present Motion of the United States indicates its concern with money from oil and gas. Its effort, however, is predicated on this rejection of territory for the United States as the means of gaining these funds. No foreign nation has claimed the territory the United States now seeks to give away, though its doing so would add funds to the federal treasury and deprive state treasuries of such funds.

Whatever the oil and gas may be worth now, that the separate states of the United States or the United States collectively will get. Whatever that value may be, it may well be less than the value of territory for fishing rights and for other things not yet dreamed of.

In the alternative, Louisiana urges, if the Court permits the filing of the motion, the time for Louisiana to respond should be extended until the Special Master in this case files his report and in no event less than one hundred and twenty (120) days from the filing of the motion. Louisiana at the present time is

engaged in completing the hearing before the Special Master and preparing briefs to file with him. The instant proceedings are diversionary in character and should not be permitted.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General.

JOHN L. MADDEN,
Assistant Attorney General.

PAUL M. HEBERT,
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W. THOMAS TETE,
Special Assistant Attorneys General.

By: /s/ Jack P. F. Gremillion

APPENDIX "A"

[Doc. No. 61.]

DEPARTMENT OF STATE,

Washington, D. C. 14th January, 1828.

The Secretary of State, to whom has been referred, by the President, the resolution of the House of Representatives of the 2d instant, requesting him "to inform that House, if it be not incompatible with the public interest, whether any representation or arrangement to or with the Mexican Government, has been made so as to enable citizens of the United States to recover debts and property belonging to them, from persons absconding from the United States and taking refuge within the limits of that Government; and whether any steps have been taken to establish the boundary of the United States between the State of Louisiana and the Province of Texas," has the honor to report:

That no such representation or arrangement, as the above resolution describes, has been made: that information reached the Department of State that some impediment existed, in some part of the United Mexican States, to the recovery of debts from the inhabitants due to foreigners; but the information was not very authentic; and, upon, inquiry of the Minister of those States, residing near this Government, he stated that he was not aware of the existence of any such impediment, but that, on the contrary, he believed the tribunals of his country were open alike to foreigners and inhabitants for the recovery of their debts and the prosecution of all their rights: that, since the adoption of the above resolution, an instruction has been addressed to the Minister of the United States at Mexico, to inquire into the true state of the fact, and, if necessary, to make such representations or remonstrances as its actual condition may call for.

That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which divides Louisiana from the Province of

Texas: but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negotiation, it would be premature to publish the correspondence that has passed between the two Governments.

All which is respectfull[y] reported.

H. CLAY.

APPENDIX "B"

20TH CONGRESS, *1st Session.* [Doc. No. 61.] HO. OF REPS. *Executive.*

FUGITIVES FROM UNITED STATES TO MEXICO, &c. &c.

Message

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING THE INFORMATION REQUIRED

By a resolution of the House of Representatives of 2nd instant,

RESPECTING

THE RECOVERY OF DEBTS, &c. IN THE MEXICAN STATES,

FROM

PERSONS ABSCONDING FROM THE UNITED STATES:

ALSO, RESPECTING THE

BOUNDARY LINE BETWEEN THE UNITED STATES

AND THE

Province of Texas

JANUARY 15, 1828.

Read, and laid upon the table.

WASHINGTON:

PRINTED BY OALES & STATON.

1828.

To the House of Representatives of the United States:

WASHINGTON, *15th January*, 1828.

In compliance with a resolution of the House of Representatives, of the 2d instant, requesting information respecting the recovery of debts and property in the Mexican States, from persons absconding from the United States: and, also, respecting the boundary between the State of Louisiana and the Province of Texas, I now transmit a report from the Secretary of State on the subject-matter of the resolution.

JOHN QUINCY ADAMS.

PROOF OF SERVICE

I, the undersigned, authorized to act on behalf of the State of Louisiana, certify that copies of the foregoing objection and memorandum have been properly served on the 24 day of June, 1971 by mailing copies, sufficient postage prepaid, to the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

s/ Jack P. F. Gremillion